

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Perna Tomar	Team: Team # 4	CCRB Case #: 200513216	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 10/30/2005 7:00 PM, Monday, 10/31/2005 12:00 AM	Location of Incident: Outside of 47th Precinct Stationhouse and inside of § 87(2)(b)	Precinct: 43	18 Mo. SOL 4/30/2007	EO SOL 4/30/2007	
Date/Time CV Reported Thu, 11/03/2005 11:04 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 11/03/2005 11:04 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. LT Fernando Guimaraes	00000	915848	043 PCT
3. POF Diane Rohman	10247	902308	043 PCT
4. POM Joseph Parchen	01651	937246	043 PCT
5. POM Marcos Pluas	06972	937296	043 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Max Gonzalez	14038	906364	043 PCT
2. POM Ricardo Jimenez	08186	906513	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Diane Rohman	Discourtesy: On October 30, 2005, inside of § 87(2)(b) § 87(2)(b) PO Diane Rohman spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
B.LT Fernando Guimaraes	Abuse: On October 30, 2005, Lt. Fernando Guimaraes entered and searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
C.POM Joseph Parchen	Force: On October 31, 2005, outside the 47th Precinct stationhouse, PO Joseph Parchen used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Marcos Pluas	Force: On October 31, 2005, outside the 47th Precinct stationhouse, PO Marcos Pluas used physical force against § 87(2)(b)	§ 87(2)(b)
E. Officers	Abuse: On October 31, 2005, officers entered and searched § 87(2)(b) in the Bronx.	§ 87(2)(b)

Synopsis

On October 30, 2005, at approximately 7:00PM, PO Max Gonzalez and PO Ricardo Jimenez arrived at § 87(2)(b), where § 87(2)(b) and § 87(2)(b) reside in regards to a must-arrest situation. § 87(2)(b) and § 87(2)(b) had a dispute on the street when neighbors called 911 and PO Gonzalez and PO Jimenez had been the officers who responded. During the dispute, § 87(2)(b) purposefully ran his car into § 87(2)(b)'s vehicle. The officers entered the home and spoke to § 87(2)(b). Lt. Fernando Guimaraes and PO Diane Rohman also arrived at the location shortly afterwards and Lt. Guimaraes spoke to § 87(2)(b) and told him he would be arrested. § 87(2)(b) was trying to look into § 87(2)(b)'s room as the officers spoke to him when PO Rohman allegedly told § 87(2)(b) to stay her "ass" in the kitchen (allegation A). § 87(2)(b) alleged that PO Jimenez searched through her closet, which was open and even looked inside cigarette packs (allegation B). § 87(2)(b) was handcuffed in the bedroom and taken to the 43rd Precinct.

PO Joseph Parchen and PO Marcos Pluas transported § 87(2)(b) to Central Booking and then to the 43rd Precinct where he was going to stay overnight. § 87(2)(b) claimed that his leg “act[ed] up” as he suffers from multiple sclerosis and the officers pushed him and kicked him out of the van and dragged him to the door of the 47th Precinct and back to the van (allegations C and D). The officers then escorted § 87(2)(b) to § 87(2)(b) and he was released on § 87(2)(b) § 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b) alleged that on October 31, 2005, between 5:00PM and 6:00PM, when § 87(2)(b) was not at home, three unidentified officers entered and searched the entire apartment where she and § 87(2)(b) reside, without her consent (allegation E).

[illegible]

Summary of Complaint

On § 87(2)(b), § 87(2)(b) a § 87(2)(b) old § 87(2)(b) man, complained at § 87(2)(b) at § 87(2)(b) that “My right leg hurts” and he indicated that his left leg suddenly became weak. He stated that he “couldn’t walk due to multiple sclerosis and was dragged by police officers out of van.” He also added that he was “dragged up and down the stairs by officers.” He complained of back pain as well. § 87(2)(b) was interviewed at the CCRB on November 9, 2005 (enc. 4a-c).

On October 30, 2005, at approximately 7:00PM, § 87(2)(b) was at home sleeping inside his apartment § 87(2)(b) at § 87(2)(b) § 87(2)(b) in the Bronx, when he was woken up by officers identified through this investigation as PO Max Gonzalez (whom he described as a uniformed Hispanic male, heavy-set, 5'8"

tall, in his early thirties) PO Ricardo Jimenez (whom he described as a uniformed white male, 6'1" tall, about 150/160 lbs., about 33 years old) and PO Diane Rohman (whom he described as a uniformed Hispanic female, "heavy," ~180 lbs., 5'9," in her upper twenties) who were standing over him. § 87(2)(b) a friend of § 87(2)(b) had filed a complaint against him earlier that day when § 87(2)(b) and § 87(2)(b) had a dispute in which § 87(2)(b) broke the window of his car. § 87(2)(b) was at § 87(2)(b) home at the time the officers came to his apartment and she relayed to § 87(2)(b) that she allowed the officers to enter. § 87(2)(b) informed the officers that she had dropped the charges she had made against § 87(2)(b) and the officers indicated to her that they still needed to speak to § 87(2)(b). The officers asked § 87(2)(b) to get dressed and told him that he would be arrested. An officer identified through this investigation as Lt. Fernando Guimaraes (whom he described as a white male, "stocky," about 170 lbs., ~30s, black hair, in a white shirt) walked into § 87(2)(b) bedroom while § 87(2)(b) was explaining to PO Gonzalez, PO Jimenez and PO Rohman that § 87(2)(b) never stated he hit her and that he should not be arrested for breaking the window of his own car. Lt. Guimaraes handcuffed § 87(2)(b) and took him to the 43rd Precinct. § 87(2)(b) suffers from multiple sclerosis and some officers at the 43rd Precinct wanted to take § 87(2)(b) to the hospital when he fell inside a cell, of his own accord, but § 87(2)(b) refused to go to the hospital.

From the 43rd Precinct, § 87(2)(b) was taken to Central Booking (he did not recall at what time) and then to the 47th Precinct by officers identified through this investigation as PO Joseph Parchen (whom he described as white male, 5'9" tall, slim build, uniformed, ~31 yo) and PO Marcos Pluas (whom he described as a white male, 5'7" tall, muscular, ~30 yo, uniformed) for the night until the court re-opened. When the officers arrived at the 47th Precinct, § 87(2)(b) left leg began to "act up" and he was unable to get out of the police van. § 87(2)(b) was originally handcuffed with only the left cuff chained to three other prisoners. § 87(2)(b) was seated in the backseat in between two prisoners, with one prisoner in the middle seat in front of them. When PO Pluas and PO Parchen directed the prisoners to get out, PO Pluas said to § 87(2)(b) "Well you're getting out the van now!" § 87(2)(b) stated that he wanted to get out of the van as well but he needed a minute to allow his leg to recover as he has multiple sclerosis and that if the officers did not want to wait for his leg to "come back" that they should take him to the hospital. The other prisoners got of the van and one of them jumped over the seat to get past § 87(2)(b). PO Parchen was outside of the van pulling § 87(2)(b) by grabbing his shirt from his right shoulder and his left wrist, bringing § 87(2)(b) between the back seat and the middle seat of the van. § 87(2)(b) had his arms lifted up above his head as Parchen did this. PO Pluas kicked § 87(2)(b) on the outer side of his thigh on his left leg as § 87(2)(b) was lying in between the backseat and the middle seat of the van while he was also pushing § 87(2)(b). At this point § 87(2)(b) was still cuffed to the chain holding together all the prisoners and the remaining prisoners observed what occurred as they stood outside of the van. As PO Pluas kicked § 87(2)(b) he screamed from pain and ultimately as PO Parchen pushed and pulled § 87(2)(b) they managed to get § 87(2)(b) out of the vehicle and placed him on the ground face down. § 87(2)(b) noticed officers coming out from the stationhouse as well, but he did not see who these officers were. At least two officers § 87(2)(b) did not see if it was PO Pluas and/or PO Parchen and indicated that he heard more than two different voices) dragged him from in front of the van by grabbing his shirt from the shoulders on both the right and the left side and lifting his upper body up. From § 87(2)(b) chest downwards, his body was making contact with the cement as the officers dragged him. § 87(2)(b) indicated that there was one officer on each side. § 87(2)(b) pants were coming down, and one of the officers pulled them back up. The chain was then disconnected and the other prisoners were taken inside the 47th Precinct.

§ 87(2)(b) was then handcuffed with both hands at the bottom of the stairs and picked up by two or more officers (he did not see who as he was aching from pain) who grabbed his elbows and dragged § 87(2)(b) up the stairs as § 87(2)(b) lower torso and legs bumped on each of the stairs. At the top of the stairs, the officers lay § 87(2)(b) face down in front of the precinct as § 87(2)(b) said, "please just take me to the hospital." Some officers were saying, "y'all better move him before the captain comes out" and an officer, who § 87(2)(b) did not see, came out of the precinct and told the officers they could not leave § 87(2)(b) there. The officers asked this officer whether they should call EMS or take him to the hospital themselves. The officers decided to take him to the hospital themselves and they told him to "stand up." § 87(2)(b) was attempting to scoot himself down the stairs and the officers picked § 87(2)(b) up by grabbing his elbows and stood him up. The officers let § 87(2)(b) go after they climbed down two stairs, causing § 87(2)(b) to fall down the stairs and land on the ground on his back. The officers then "threw"

him into the van by lifting him up and shoving his legs inside. During transport § 87(2)(b) was not seated in a seat but laying on the floor of the van as he was handcuffed. PO Parchen and PO Plus then took § 87(2)(b) to § 87(2)(b). He stated he sustained scrapes on his legs and bruises on his back and shoulder. § 87(2)(b) criminal case was dismissed since § 87(2)(b) dropped the charges. He returned home to find out from § 87(2)(b) that officers came to his house on October 31st and broke open his closet.

On October 31, 2005, at approximately 6:30PM, officers allegedly arrived at § 87(2)(b) apartment when he was not present and § 87(2)(b) was at home. Officers showed § 87(2)(b) a piece of paper but she did not know whether it was a search warrant. The officers searched through his locked closet (by breaking open the lock which he indicated he keeps locked because of § 87(2)(b)'s drug addiction) and another walk-in closet that belonged to § 87(2)(b). According to § 87(2)(b) the officers went into each of the bedrooms in the apartment.

§ 87(2)(b) stays with § 87(2)(b) frequently in order to help take care of him and help § 87(2)(b) with his daughter. § 87(2)(b) provided contact information for one of the prisoners whom he knew prior to the incident, § 87(2)(b). The other prisoners were Hispanic males, one young and one old.

Photographic Array

A photo array of potential subject officers for the incident outside the 47th Precinct stationhouse were shown to § 87(2)(b) on June 29, 2006. This array was comprised of twenty-nine white and Hispanic male officers who were assigned to impact during the third tour on October 30, 2005. Of PO Emanuele Leggio, § 87(2)(b) noted, "He look like another one of them that drag me up the stairs." Of PO Martin Pastor, he noted that "he is also look like one of the cops that throw me down the stairs." Of PO Jose Cortez, he indicated, "Look like the one driving the van and kick me out the van after I said I can not walk." Of PO Joseph Parchen, he wrote, "He look like one of the cops that help drag me up the stairs." Of PO Hector Jimenez, he wrote, "He just look like he was there." Of PO William Eiseman, he wrote, "he look like one of the cop that throw me down the stairs" (enc. 4d-gg).

Results of Investigation

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b) year old § 87(2)(b) woman, was interviewed at the CCRB on November 23, 2005 (enc. 5a-d).

On October 30, 2005, at approximately 7:00PM, in the vicinity of § 87(2)(b) officers came to § 87(2)(b)'s house to arrest § 87(2)(b). (§ 87(2)(b) explained that earlier that day § 87(2)(b) and § 87(2)(b) had a fight on the street. The two were in their cars and § 87(2)(b) crashed his car head on into § 87(2)(b)'s car and started a "ruckus" in the street. The people in the neighborhood called the police and when the police got there, § 87(2)(b) had left the scene and § 87(2)(b) explained to the officers what happened. § 87(2)(b) had called the 43rd Precinct and indicated that she wanted the charges against § 87(2)(b) dropped. Officers identified through this investigation as PO Gonzalez (whom she described as 5'5," Hispanic, stocky, ~240 lbs., ~38/39 yo, uniformed) and PO Jimenez (whom she described as 5'9," white, slim build, ~180 lbs, ~42 yo, uniformed) knocked on the door of the apartment and rang the doorbell and § 87(2)(b) opened the door. § 87(2)(b) told the officers that she wanted to drop the charges and the dog was barking then. The officers told § 87(2)(b) to put the dog away in her daughter's room and she closed the door fully but did not lock it and went to put the dog away. § 87(2)(b) stated that her daughter's room and § 87(2)(b) rooms are on opposite sides of the apartment. When § 87(2)(b) returned, the officers were inside the apartment and had gone into § 87(2)(b) room. By the time § 87(2)(b) put the dog away, two additional officers, officers identified as PO Rohman (whom she described as 5'3," ~135 lbs, ~33/34 yo, uniformed, female, white) and Lt. Guimaraes (whom she described as wearing a white shirt, white male, white hair, ~60 yo), had entered. PO Rohman and Lt. Guimaraes were also with PO Gonzalez and PO Jimenez in § 87(2)(b) bedroom. § 87(2)(b) tried to look into § 87(2)(b) bedroom and came within a few feet of the room when PO Rohman and PO Jimenez came out of the room and PO Rohman told § 87(2)(b) to "stay her ass in the kitchen." PO Jimenez started searching § 87(2)(b)

§ 87(2)(b)'s closet looking in her closet – shuffling through the shelves and looking even in cigarette packs and trying to open § 87(2)(b)'s closet, which was locked, as § 87(2)(b) stood in the living room over five feet from PO Jimenez. One of the male officers commented about the possibility of guns in her closet (she did not know anything about a gun in the closet). The officers then left with § 87(2)(b) who was handcuffed before he left the bedroom.

On October 31, 2005, at approximately between 5:00 and 6:00PM, three plainclothes officers, a different set of officers than the ones from the previous day, arrived at the apartment. The officers did not ring the doorbell but knocked on the door loudly, which indicated to § 87(2)(b) that they were officers. § 87(2)(b) looked through the peephole and saw three men. § 87(2)(b) opened the door about a foot and an officer she described as mixed race, 6'4" tall, slim build, weighing about 170 pounds, about 40 years old, pushed the door open and walked in. § 87(2)(b) asked, "what do you want? § 87(2)(b) is not here." The "mixed race" officer said, "We want the gun." § 87(2)(b) replied, "There is no gun here," and asked the "mixed race" officer if he had a warrant. The "mixed race" officer had a piece of paper in his hand and he said, "we sure do" and flashed a sheet of paper but she did not get a good look at this paper (she indicated there was a lot of writing and asked to see it but he would not give it to her). All three of the officers searched § 87(2)(b)'s closet, which is on the left as soon as the apartment is entered. They pulled everything out from the shelves, including a Christmas tree, clothes, and bags. They proceeded to § 87(2)(b)'s closet, which is adjacent to § 87(2)(b)'s closet. The "mixed race officer" broke open the lock with his hand and they searched this closet as well. The officers pulled everything out, including plastic drawers with socks, panties and shelves. They went into § 87(2)(b)'s room; they lifted up the mattress, looked inside the drawers, and looked inside the drawers of the entertainment center. The officers then went into a child's room but in this room they were more careful § 87(2)(b) said that it was obvious that this was a child's room given the toys) in checking the drawers of the room. The officers did not move things around in the child's room. The officers then searched the bathroom cabinets as well as kitchen cabinets. The officers did not take anything from the apartment and left.

The officers with the "mixed race" officer were a white male, with black hair, 5'4" tall, about 35 years old, and a black male, 5'7" tall, with a medium build, about thirty-five years old.

Civilian Witnesses

§ 87(2)(b) provided a telephone number for his friend "§ 87(2)(b)" whose full name is § 87(2)(b). § 87(2)(b) was scheduled for an interview on December 9th, which he failed to appear for. A message was left for him on December 12th and he called back and hung up the phone. He called back again and when he was asked to re-schedule, he indicated he would call back and did not do so. Upon receipt of the command log, letters were mailed to § 87(2)(b) and the three other males who were transported with § 87(2)(b), § 87(2)(§ 87(2)(b)), § 87(2)(b), and § 87(2)(b) on February 1 and March 2nd at the addresses indicated in the command log entry and arrest reports for them. On February 6th, a family member of § 87(2)(b) responded to the letter and provided a telephone number for him. Two additional messages were left for § 87(2)(b) which he did not respond to. The letters mailed to § 87(2)(b) (at the address which he provided over the phone) and § 87(2)(b) were returned to the CCRB as undeliverable. No number for § 87(2)(b) could be located through whitepages.com, MetroSearch or the Coles Directory.

Officer Identification

PO Max Gonzalez was identified as § 87(2)(b) arresting officer from his arrest report and corroborated that he responded to § 87(2)(b) home on October 30, 2005 during his CCRB interview. PO Jimenez was identified as PO Gonzalez's partner by PO Gonzalez and verified his presence at § 87(2)(b) home on October 30, 2005. Lt. Guimaraes was identified by PO Gonzalez and verified that he was the supervising officer who authorized § 87(2)(b) arrest and his identity as a subject officer during his CCRB interview. PO Rohman was identified as Lt. Guimaraes' partner by Lt. Guimaraes and her assignment was verified through the 43rd Precinct roll call. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The roll call assignments for prisoner transportation indicated that a sergeant and two females were assigned to the van that transported § 87(2)(b) to Central Booking, prolonging the officer identification process as the officers involved in/present for § 87(2)(b) arrest were unaware as to who did transport him to Central Booking and the desk officers working during tour 1 on October 31, 2005 and tour 3 on October 30, 2005 failed to recall who the officers transporting § 87(2)(b) were. According to the command log, the time § 87(2)(b) was taken to Central Booking was 11:25PM on October 30th and the time he was seen at § 87(2)(b) was § 87(2)(b) § 87(2)(g)

§ 87(2)(b) Sgt. James Kelly (the desk officer during tour 3 on October 30, 2005) did, however, relay that the officers were likely to be impact officers working the 1800 by 0200 hours tour. Thus, photos of all of the officers who were assigned to impact posts were shown to § 87(2)(b) who identified a number of officers. Each of these officers was interviewed and PO Parchen was identified by his memo book entry. PO Parchen and PO Pluas verified their identities as the subject officers in relation to the incident outside of the 47th Precinct on October 31, 2005. While § 87(2)(b) alleged that both officers used physical force against him, § 87(2)(b) descriptions of the officers' appearances clarified which officer allegedly kicked him (PO Pluas) and which officer allegedly pushed and pulled him (PO Parchen).

In regards to the alleged entry and search of § 87(2)(b) apartment on October 31, 2005, a communications check received negative results and no search warrant was located through MAS search warrant database. According to § 87(2)(b) arrest report he had no active warrants for which officers would have responded to his home (and the type of search, with § 87(2)(b) already under arrest, suggests that it would have been pursuant to the execution of a search warrant). None of the officers who arrested § 87(2)(b) on October 30, 2005 had any knowledge of a search of his home. Lt. Gallagher, who was the supervisor of the 43rd Precinct detective squad during the time this alleged search occurred, indicated in his CCRB interview that there was neither a search warrant for the location from his squad nor were there any open warrants for § 87(2)(b). Additionally, none of the detectives working in the 43rd Precinct detective squad were black males and § 87(2)(b) had indicated that one of the officers was a Black male.

Officer Statements

PO Max Gonzalez

PO Max Gonzalez was interviewed at the CCRB on January 20, 2006 (enc. 6a-i). On October 30, 2005, PO Gonzalez worked a 0700 by 1500 hours tour with PO Ricardo Jimenez, doing overtime from 1800 until 0010 hours. He was assigned to patrol sector G in a marked patrol car and was dressed in uniform. On October 31, 2005, PO Gonzalez worked 0700 by 1540 and was assigned to court. PO Gonzalez had the following entries in his memo book regarding this incident: "1930: 1 under § 87(2)(b) § 87(2)(b). 1947 perpetrator fainted in cells. Bus called. Desk Officer notified. § 87(2)(b) EMS § 87(2)(b) § 87(2)(b) perpetrator to § 87(2)(b) 1950 perpetrator sitting up ok. 2025 PO Parchon escorting perpetrator 2035 perpetrator refusing to go to Hospital. 2050 EMS supervisor on scene Lt. Hollar. Perp says he made it up. Perp RMA as per EMS Lt. ACR # § 87(2)(b). 2200 Complaint done 2300 OLBS done 2350 perp printed 2355 papers and perp transported to Central Booking."

On October 30th, PO Gonzalez did not recall at what time, § 87(2)(b) intentionally crashed his car into § 87(2)(b)s because § 87(2)(b) thought she was leaving him or was "playing him dirty." PO Gonzalez and PO Jimenez were assigned the job and when they arrived to the scene at Haviland Avenue and Olmstead Avenue, § 87(2)(b) had already left. PO Gonzalez and PO Jimenez took § 87(2)(b)s report. PO Gonzalez indicated that § 87(2)(b) was very disturbed and they attempted to calm her down. § 87(2)(b) said to PO Gonzalez that § 87(2)(b) had a shotgun in the house and she was scared. Once the officers took her report, and they left. At approximately 7:30PM on the same day PO Gonzalez and PO Jimenez arrived at § 87(2)(b) § 87(2)(b) in the Bronx, to arrest § 87(2)(b) When they arrived,

they knocked on the door of the apartment and were surprised to find § 87(2)(b) opening the door. They asked § 87(2)(b) if § 87(2)(b) was at home and she said he was. They asked if they could come in and § 87(2)(b) allowed them to enter. The officers entered about three feet into the apartment, placing them in the kitchen, and from their vantagepoint they saw § 87(2)(b) lying in bed in his underwear. PO Gonzalez indicated the apartment is laid out as an open space and the bed where § 87(2)(b) was lying down was to about 10 feet from where they stood off to one side (PO Gonzalez did not recall which side). He stated that they did not want to enter further because they remembered § 87(2)(b) revealing that § 87(2)(b) had a gun at home. The officers asked for § 87(2)(b) to come with them and he refused to get up and comply with their directive. Failing that, PO Gonzalez asked for his supervisor, Lt. Fernando Guimaraes, to come to the location and Lt. Guimaraes responded with a number of officers. PO Gonzalez indicated he did not recall how many officers came and did not know any of their names. Once Lt. Guimaraes arrived, PO Gonzalez did not interact any further with § 87(2)(b) and turned his attention to § 87(2)(b). § 87(2)(b) indicated that she wanted to drop the charges against § 87(2)(b) and PO Gonzalez informed her how she could go about doing that. PO Gonzalez stated that he did not look inside any of the closets and he indicated that they could not have done that because the closet had a lock on it. PO Gonzalez indicated that he did not open any unlocked closets. PO Gonzalez did not hear any officer tell § 87(2)(b) to “stay her ass in the kitchen.” PO Gonzalez did not search any closets in the apartment nor did he see any officers do that. PO Gonzalez did not see officers search cigarette packs or drawers inside a closet nor did he see any officers do this.

Ultimately, § 87(2)(b) complied with the officers and PO Gonzalez went to 43rd Precinct with Lt. Guimaraes while § 87(2)(b) was transported in another vehicle. At approximately 8:30PM, when § 87(2)(b) was being wheeled out after he supposedly fainted inside the cells, § 87(2)(b) said he did not want to go to the hospital and officers told him he had to go since he fainted, which is when § 87(2)(b) said he faked the fainting.

PO Gonzalez said he never returned to § 87(2)(b) apartment on October 31, 2005 and indicated that he ended his tour at 3:40PM. PO Gonzalez indicated he spoke to Lt. Guimaraes on the phone and learned that § 87(2)(b) arrived at the precinct and she signed the papers to drop charges. PO Gonzalez did not know who transported § 87(2)(b) to Central Booking.

Lt. Fernando Guimaraes

Lt. Fernando Guimaraes was interviewed at the CCRB on February 2, 2006 (enc. 7a-e). On October 30, 2005, Lt. Guimaraes worked an 1800 by 0235 hours tour (overtime) as the spike lieutenant. Lt. Guimaraes' operator was PO Diane Rohman and he was dressed in uniform. They were assigned to an unmarked car. Lt. Guimaraes had the day off on October 31st. Lt. Guimaraes had the following entries regarding this incident: “2100: 10-85 PO Gonzalez at § 87(2)(b) PO Korabel at § 87(2)(b) in regards to arrests.”

On October 30, 2005, at approximately 9:00PM, PO Gonzalez asked for Lt. Guimaraes' assistance in regards to an arrest situation. During the course of the day, when PO Gonzalez had worked the day tour, § 87(2)(b) girlfriend, § 87(2)(b) had filed a complaint against § 87(2)(b) for criminal mischief and menacing with a cane. § 87(2)(b) had also rammed his car into § 87(2)(b) car intentionally. PO Gonzalez worked the overtime with Lt. Guimaraes and they knew there was an open complaint report against § 87(2)(b). PO Gonzalez called for assistance, which is when Lt. Guimaraes arrived at the location and PO Rohman entered with him. § 87(2)(b) was at the door when Lt. Guimaraes arrived. § 87(2)(b) was “hyper” and “irrational” and was yelling and screaming. Lt. Guimaraes described that the apartment is laid out such that the kitchen is immediately in front of the entrance and § 87(2)(b) bedroom is a separate bedroom to the left-hand side. Lt. Guimaraes indicated that no other rooms in the apartment were entered apart from § 87(2)(b) bedroom. § 87(2)(b) was still in bed with the sheets pulled up when Lt. Guimaraes arrived and did not want to get out of bed. After about five to ten minutes of talking, the officers were able to convince § 87(2)(b) to get out of the bed. With the situation of § 87(2)(b) having his sheets pulled up over him, the officers were concerned, as they did not know what was underneath the sheets. When § 87(2)(b) got out of the bed, he was dressed in boxer shorts and a T-shirt and they told him to get dressed and he put his shoes on and they handcuffed him and escorted him outside the house. While § 87(2)(b) was

getting dressed, PO Gonzalez indicated that § 87(2)(b) had stated that there was a shotgun or rifle in one of the closets. As soon as the apartment is entered, there are closet on the left-hand side. One closet was padlocked shut and another closet was slightly open less than one foot. Lt. Guimaraes flashed his flashlight in the closet once § 87(2)(b) had gotten out of bed since there was nothing underneath the sheets. Lt. Guimaraes indicated that he may have touched things inside the closet to move them around since the closet was messy and could not recall the specifics as to what he touched and moved around (but admitted that his hand may have passed the threshold of the door of the closet) but that he “mainly flashed his flashlight” to see what was in plainview. Lt. Guimaraes stated that he did not look inside cigarette packs not did he touch the closet that was padlocked shut.

Lt. Guimaraes did not remember if PO Rohman had any interaction with § 87(2)(b). Lt. Guimaraes did not know if there was a time when PO Rohman was outside of the bedroom and did not hear PO Rohman make the alleged comment. Lt. Guimaraes recounted that § 87(2)(b) had a fake fainting spell and did not want to go the hospital when EMS responded to the 43rd Precinct. Lt. Guimaraes was in the field when all of this occurred. Lt. Guimaraes was not aware as to which officers escorted § 87(2)(b) to central booking and when he was shown the roll call he confirmed that according to the roll call Sgt. Salters, PO Salecedo and PO Melendez were assigned to the van that escorted prisoners to central booking. Lt. Guimaraes added that it was unlikely that a sergeant escort prisoners but his operators may have escorted the prisoners. Lt. Guimaraes did not return to this location on October 31st or on any other date. Lt. Guimaraes did not recall that PO Rohman told § 87(2)(b) to “stay [her] ass in the kitchen” on October 30th. Lt. Guimaraes indicated PO Gonzalez would be the officer requesting a search warrant for the location if they wanted to re-enter the apartment and that no search warrant was obtained to return to the location. He had no knowledge of any warrant against § 87(2)(b) or for his apartment and was not aware which officers, if any, entered and searched his apartment on October 31st.

PO Ricardo Jimenez

PO Ricardo Jimenez was interviewed at the CCRB on March 21, 2006 (enc. 8a-b; 15a-e). On October 30, 2005, PO Jimenez worked an 0705 by 1540 hours assigned to patrol. He was dressed in uniform and was assigned to a marked patrol car. He did not have his memo book with him.

On October 30, 2005, at approximately 9:00PM, PO Jimenez stated that he responded to § 87(2)(b)'s apartment where § 87(2)(b) was also present, in regards to an open complaint from earlier that day when § 87(2)(b) supposedly robbed her and rammed his car into hers. After they knocked on the door, § 87(2)(b) opened the door and gestured for them to come in. They entered and she pointed him out in the bedroom. § 87(2)(b) told them to be careful as he may have a gun in the house. The bedroom was partitioned off and they made a left turn into a hallway and then a right turn to enter the bedroom. PO Jimenez said § 87(2)(b) was in the bedroom, awake, but he did not know if he was sitting or lying down in bed. They asked him if he was okay and then PO Gonzalez radioed for a lieutenant who responded to the scene shortly thereafter since § 87(2)(b) did not comply with the officers once they told him he would be arrested. PO Jimenez stated that he did not recall any closet or looking inside any closet. Lt. Guimaraes arrived with PO Rohman and he placed § 87(2)(b) under arrest. Lt. Guimaraes interviewed the victim, spoke to PO Gonzalez and placed § 87(2)(b) under arrest.

PO Rohman was standing in the bedroom with them. § 87(2)(b) was in the kitchen crying. PO Jimenez stated that no verbal interaction took place between PO Rohman and § 87(2)(b). PO Rohman did not tell § 87(2)(b) to “stay [her] ass in the kitchen.” PO Jimenez did not see Lt. Guimaraes look inside any closet. PO Jimenez did not do so and did not see PO Gonzalez do this. PO Jimenez never returned to this location after October 30th. He stated that he was not involved in the transport of § 87(2)(b) to central booking as he was doing overtime and would not be doing overtime for transport. PO Jimenez did not know whether a search warrant was obtained subsequent to this incident for this location or whether a further investigation was carried out in relation to this location or § 87(2)(b). PO Jimenez stated he did not search the apartment on October 31st. He was patrolling sector DG with PO Reyes and working tour 2 on October 31st.

PO Joseph Parchen

PO Parchen was interviewed at the CCRB on July 31, 2006 and did not bring his memo book with him. PO Parchen was re-interviewed on August 7, 2006 after he faxed his memo book which reflected that he was working with PO Pluas and at § 87(2)(b) hours, he returned “to house to transport prisoner to hospital” (enc. 9a-f)

PO Parchen stated that on October 30, 2005, he worked an 1800 by 0235 hours tour assigned to footpost 6, then transferred to Prisoner Transport (marked van), with PO Pluas, in uniform.

PO Parchen stated that after discussing the case with PO Pluas, because PO Parchen’s memo book entry lacked the detail of his partner’s that evening, he began to remember more information about § 87(2)(b) and the incident itself. PO Parchen stated that after hearing “MS” and § 87(2)(b) name during the CCRB interview on July 31, 2006, he looked up § 87(2)(b)’s case. He then stated that he was actually “10-02’d,” further explaining that PO Parchen was supposed to take him directly to the hospital. At the 43rd Precinct, § 87(2)(b) stated that he could not move his legs and EMS was called to the 43rd Precinct. However, when § 87(2)(b) saw that his friend (PO Parchen did not know the name of his friend) had been arrested he no longer wanted to go to the hospital. PO Parchen further explained that § 87(2)(b) stated that § 87(2)(b) don’t have MS. My legs work fine.” PO Parchen then completed the resulting paperwork to transfer § 87(2)(b) back to the “cell,” where his friend was.

PO Parchen then stated that he transported § 87(2)(b) along with a “bunch of people,” and could not recall how many to Central Booking. Upon arriving at Central Booking, PO Parchen said that they were “lodged out,” explaining that Central Booking was full and that the prisoners would have to go somewhere else. At this point, PO Parchen and PO Pluas were transporting the prisoners to the 47th Precinct, when § 87(2)(b) began complaining about his legs again, and stating that he “did not want to spend the night,” and “I can’t feel anything.” PO Parchen then explained that he needed approval from a Sergeant to take § 87(2)(b) to the hospital. § 87(2)(b) stated that he could not exit the van. PO Parchen stated that he was cautious with § 87(2)(b) because he was 6’3” and approximately 250lbs., and charged § 87(2)(a) 160.50

PO Parchen then stated that he and PO Pluas secured § 87(2)(b) detached him from the other prisoners in the Transport Van, and rear cuffed him. PO Parchen and PO Pluas then tried to carry § 87(2)(b) out of the van, by carrying him from under his armpits, which resulted in § 87(2)(b) falling several times. PO Parchen and PO Pluas then brought § 87(2)(b) back to the hospital, after receiving approval from the Sergeant outside of the front door of the 47th Precinct on top of the stairs. Upon arriving at the hospital § 87(2)(b) began screaming, “my legs hurt, my legs don’t work.” When hospital staff brought out a wheelchair, § 87(2)(b) then stood up and walked to the wheelchair. At this point, PO Parchen inquired about Multiple Sclerosis with the doctor who informed him that MS does not appear intermittently with attacks but is a constant problem, after which he left § 87(2)(b) and Officer Pluas at the hospital.

PO Parchen clarified that he could not call EMS when he was outside the 47th Precinct stationhouse as he needed the Sergeant’s approval to do so, given that PO Parchen and PO Pluas still had custody of the other prisoners who had been arrested in the 43rd Precinct.

PO Parchen denied the force alleged by § 87(2)(b). § 87(2)(b) complained of no injuries apart from the immobility of his leg.

PO Marcos Pluas

PO Macros Pluas was interviewed at the CCRB on August 2, 2006 (enc. 10a-e). He stated that on October 30, 2005, he worked 18:00 to 02:35, initially on Post 6, then Transport along with PO Parchen. PO Pluas indicated that he was working transport in a marked van, in uniform.

PO Pluas then read from his memo book: at 23:01 his post was changed to transfer four males and three females to Central Booking. At 00:15, PO Pluas arrived at Central Booking. At 01:15, PO Pluas was ordered to latch out the three females to the 52nd Precinct, and the four males 47th Precinct. PO Pluas

arrived at the 52nd Precinct, at 01:28 leaving three females there and proceeded to the 47th Precinct. At § 87(2)(b) PO Pluas transported one prisoner, § 87(2)(b) to § 87(2)(b) and arrived at § 87(2)(b). § 87(2)(b) was seen by doctors at § 87(2)(b). PO Pluas was relieved at 03:35.

PO Pluas stated that he transported the four male prisoners, who were chained together, from Central Booking to the 47th Precinct. § 87(2)(b) was seated in the rear seat of the van on the driver's side with one other prisoner next to him, one directly in front and one in front and to his right. While in transport, § 87(2)(b) stated to the other prisoners that § 87(2)(b) ain't sleeping on no cold bench. I'm going to the hospital." Upon arriving at the 47th Precinct, § 87(2)(b) indicated that he could not move his legs. At this point, PO Pluas and PO Parchen assisted § 87(2)(b) by carrying him by lifting him from under his armpits. The officers carried § 87(2)(b) from the van to the top of the stairway of the 47th Precinct when an unidentified desk sergeant ordered § 87(2)(b) be taken to § 87(2)(b).

PO Parchen and PO Pluas then unlinked § 87(2)(b) from the other three male prisoners at the top of the staircase outside of the 47th Precinct stationhouse where they rear cuffed him. They then carried him back to the transport van and brought him to § 87(2)(b) where they arrived at § 87(2)(b). PO Pluas stated that § 87(2)(b) walked from the van to an awaiting wheelchair upon arriving at § 87(2)(b). PO Pluas then waited with § 87(2)(b) until PO Pluas was relieved at 03:35.

PO Pluas denied the force alleged by § 87(2)(b) and stated that § 87(2)(b) had no visible injuries but did inform him that he could not move his legs upon arriving at the 47th Precinct.

Lt. Brendan Gallagher

Lt. Brendan Gallagher, of the 43rd Precinct detective squad, was interviewed at the CCRB on June 15, 2006 (enc. 13a-b). On October 31, 2005, Lt. Gallagher worked a 1400 by 2325 hours tour as commanding officer of the 43rd Precinct Detective squad. He was dressed in plainclothes and was not assigned to a motor vehicle. Lt. Gallagher had no memo book entries regarding this incident.

On October 31, 2005, Lt. Gallagher did not respond to § 87(2)(b) home, did not authorize any of his officers to respond to the location, and was not aware as to whether any of his officers responded to the location. To his knowledge, there was neither a search warrant for the location from his squad nor were there any open warrants for § 87(2)(b). Lt. Gallagher did not recall if he left the command at any point during his tour on October 31, 2005.

Command Log Entries

§ 87(2)(b) was entered into the command log at 7:25PM and was transported to Central Booking in van # 5369 at 11:25PM. His physical and mental condition is "normal." § 87(2)(b) ("§ 87(2)(b)" was entered at 8:22PM and transported in the same van as § 87(2)(b) to the 47th Precinct. The command log entries identified § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) as the males who were transported with § 87(2)(b) to the 47th Precinct (enc. 30a-w).

Medical Records

§ 87(2)(b) was transported by PO Parchen and PO Pluas to § 87(2)(b) where he arrived at § 87(2)(b) and was discharged on § 87(2)(b). While there he complained that his right leg and his back hurt. He indicated that his left leg suddenly became weak. He stated that he "couldn't walk due to multiple sclerosis and was dragged by police officers out of van." He also added that he was "dragged up and down the stairs by officers." He complained of back pain as well. He was administered morphine for the pain and released with no further therapy. The Neurology Department found that § 87(2)(b) symptoms were inconsistent with an MS flare (enc. 21a-aa).

Criminal Conviction History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Complainant CCRB History

This is [§ 87(2)(b)] first CCRB complaint (enc. 2).

Officers' CCRB Histories

Lt. Guimaraes, who has been a member of the NYPD for eleven years, and PO Rohman, who has been a member of the NYPD for fourteen years, have no substantiated allegations in their CCRB histories. PO Parchen and PO Pluas, both of whom have one-year tenures with the NYPD, have no substantiated allegations in their CCRB histories (enc. 1a-d).

Conclusions and Recommendations

Undisputed Facts

On October 30, 2005, PO Gonzalez and PO Jimenez arrived at [§ 87(2)(b)] home in regards to an open complaint against him, which was filed by his girlfriend [§ 87(2)(b)] earlier on October 30th. PO Gonzalez and PO Jimenez were the officers who took her complaint in which she claimed that [§ 87(2)(b)] rammed his car into hers [§ 87(2)(b)] stated that the car she was in also belongs to him). At approximately 7:00PM on October 30, 2005, [§ 87(2)(b)] answered the door and the officers entered the location. Lt. Guimaraes and PO Rohman also arrived at the location and entered. The officers arrested [§ 87(2)(b)] At the 43rd Precinct stationhouse, officers called EMS for [§ 87(2)(b)] who refused medical attention. PO Parchen and PO Pluas then escorted him to Central Booking after which he was going to be taken to the 47th Precinct overnight. Outside the 47th Precinct, PO Parchen and PO Pluas took [§ 87(2)(b)] out of the van as he was linked to other prisoners. The officers then took him to [§ 87(2)(b)]

Disputed Facts

[§ 87(2)(b), § 87(2)(g)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Credibility Assessment

[§ 87(2)(b), § 87(2)(g)]
[REDACTED]
[REDACTED] According to [§ 87(2)(b)], [§ 87(2)(b)] told him that on October 30, 2005, she allowed the officers to enter when [§ 87(2)(b)] was home (as the officers claimed as well) while in her statement she described how the officers came in while she went to put the dog away. Furthermore, [§ 87(2)(b)] never alleged that any officer spoke discourteously to [§ 87(2)(b)] or searched a closet when he provided his statement. [§ 87(2)(b), § 87(2)(g)]
[REDACTED]

§ 87(2)(b), § 87(2)(g)

[illegible][illegible]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] None of the officers recalled what, if any, interaction PO Rohman and [REDACTED] had and did not hear PO Rohman make the alleged comment.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegations Not Pleaded

While § 87(2)(b) claimed that she did not consent to an entry on October 30, 2005 as the officers claimed, § 87(2)(b) indicated that she told him that she allowed the officers to enter. § 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation A: On October 30, 2005, inside of § 87(2)(b) in the Bronx, PO Diane Rohman spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation B: On October 30, 2005, Lt. Fernando Guimaraes searched § 87(2)(b) in the Bronx.

Lt. Guimaraes described that as § 87(2)(b) was getting dressed in the bedroom, Lt. Guimaraes being informed by PO Gonzalez that there may be a gun in the closet (which § 87(2)(b) indicated one officer commented as well), went to a closet near the main entrance of the apartment where he flashed his flashlight and “may have” moved things around because the closet was messy. § 87(2)(b), § 87(2)(g)

[REDACTED]

Although § 87(2)(b) denied any mention of a gun, the officers indicated that earlier, at the time she filed the complaint against § 87(2)(b), § 87(2)(b) stated that he may be armed with one and she was scared of him. § 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b) New York courts have upheld that the use of a flashlight is “minimal intrusion” and if an officer has the right to be present at the site of the invasive activity, the ensuing interference with a person’s right of privacy will not be an unreasonable search. Kamins, New York Search and Seizure, Enc. ____

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) New York courts have found that two main factors speak to the reasonability of a search: the nature of the intrusion and the relative expectation of privacy in the area searched. § 87(2)(b), § 87(2)(g)

“The more diminished the expectation [of privacy], the greater the chance that the intrusion will be held permissible. The U.S. Supreme Court has held that in evaluating an expectation of privacy, “what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection” Kamins, New York Search and Seizure, Enc. __ § 87(2)(b), § 87(2)(g)

Allegation C: On October 31, 2005, outside of the 47th Precinct stationhouse, PO Joseph Parchen used physical force against § 87(2)(b)

Allegation D: On October 31, 2005, outside of the 47th Precinct stationhouse, PO Marcos Pluas used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation E: On October 31, 2005, officers entered and searched § 87(2)(b) § 87(2)(b) in the Bronx.

As discussed, no search warrant was located through the MAS search warrant database. According to § 87(2)(b) arrest report he had no active warrants for which officers would have responded to his home (and the type of search, with § 87(2)(b) already under arrest, suggests that it would have been pursuant to the execution of a search warrant). None of the officers who arrested § 87(2)(b) on October 30, 2005 had any knowledge of a search of his home. Lt. Gallagher, who was the supervisor of the 43rd Precinct detective squad during the time this alleged search occurred, indicated in his CCRB interview that there was neither a search warrant for the location from his squad nor were there any open warrants for § 87(2)(b). Additionally, none of the detectives working in the 43rd Precinct detective squad were black males and § 87(2)(b) had indicated that one of the officers was a black male. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date